

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

TRENCHTECH, INC.

1979 Old Bristol Pike

Morrisville, PA 19067

(b) County of Residence of First Listed Plaintiff Bucks County, PA

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael B. Dubin, Esquire, Semanoff Ormsby Greenberg & Torchia LLC

2617 Huntingdon Pike, Huntingdon Valley, PA 19006

(215) 887-0200

DEFENDANTS

EFFICIENCY PRODUCTION, INC.

685 Hull Road

Mason, MI 48854

County of Residence of First Listed Defendant Ingham County, MI

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habes Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
Breach of exclusive distributorship agreement**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
in excess of \$150,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/30/15

SIGNATURE OF ATTORNEY OF RECORD

Michael B. Dubin

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TRENCHTECH, INC.,
1979 Old Bristol Pike
Morrisville, PA 19067

Case No.

Plaintiff,

vs.

EFFICIENCY PRODUCTION, INC.
685 Hull Road
Mason, MI 48854

Defendant.

COMPLAINT

Plaintiff, Trenchtech, Inc., by its attorneys, Semanoff Ormsby Greenberg & Torchia, LLC, hereby files this Complaint against Defendant, Efficiency Production, Inc., and in support thereof avers as follows:

PARTIES

1. Plaintiff, Trenchtech, Inc. ("**Trenchtech**") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at the address set forth in the above caption.

2. Defendant, Efficiency Production, Inc. ("**EPI**") is a corporation organized and existing under the laws of the State of Michigan with its principal place of business located at the address set forth in the above caption.

JURISDICTION AND VENUE

3. Jurisdiction in this Court is appropriate based on diversity of citizenship and pursuant to 28 U.S.C. § 1332(a)(1), as the civil action is between citizens of different states and

the amount in controversy, exclusive of interest and costs, exceeds Seventy-Five Thousand Dollars (\$75,000).

4. Venue is proper in this Court because EPI has conducted substantial business in this District and a substantial part of the events giving rise to the claims occurred in this District.

FACTS

5. Trenchtech is in the business of providing shoring solutions to the underground construction industry including excavators, utility contractors and general contractors.

6. EPI is a manufacturer and distributor of shoring products, including but not limited to, modular trench shielding systems.

7. Beginning in or around early 1998, Trenchtech began purchasing shoring products manufactured and distributed by EPI.

8. In or around late 2000/early 2001, Trenchtech became an exclusive distributor of EPI's shoring products. Specifically, EPI offered to Trenchtech that if it agreed to purchase equipment only from EPI in the areas where Trenchtech had established operations, EPI would not sell shoring products to any other distributor or shoring company in the areas where Trenchtech had established operations nor would EPI rent or sell product directly to any contractors in those same areas. Trenchtech agreed to this arrangement thereby establishing an oral exclusive distributorship agreement with EPI (the "**Agreement**").

9. Trenchtech has purchased approximately \$20 million in product from EPI since 1998.

10. In March 2010, three long-time employees of Trenchtech resigned and started a competing company called ShorQuip Supply, Inc. ("**ShorQuip**").

11. ShorQuip is a corporation that is organized and existing under the laws of the Commonwealth of Pennsylvania with its registered address in Lafayette Hill, PA.

12. ShorQuip is a direct competitor of Trenchtech and since its inception, has been operating in the same territory as Trenchtech, specifically in Philadelphia and surrounding area.

13. At some time after ShorQuip begin operating its business, Trenchtech discovered that EPI was supplying ShorQuip with EPI shoring products, in material breach of the Agreement.

14. Trenchtech vehemently objected to EPI supplying ShorQuip with EPI shoring products and in response, Trenchtech was informed by Mike West, VP of EPI, that the Ken Forsberg, EPI's President's response was "they are going to buy it from somewhere, why not from me?"

15. Mike West then assured Trenchtech that EPI would only provide equipment to ShorQuip that was manufactured by Safe-T-Shore, a different company owned by EPI that was located in Arizona. However, Trenchtech later learned that EPI reneged on this promise and not only did EPI supply ShorQuip with EPI's shoring equipment but EPI also advertised ShorQuip as an EPI distributor in Trenchtech's market. In addition, ShorQuip advertised itself as an authorized EPI distributor.

16. In fact, on EPI's website, the two distributors identified in the Philadelphia area are Trenchtech and ShorQuip.

17. In addition to selling shoring products to ShorQuip in Trenchtech's market in material breach of the Agreement, EPI also breached the Agreement by re-renting equipment to other distributors in areas where Trenchtech had established locations and/or supplying contractors with EPI's Slide-Rail systems.

COUNT I
BREACH OF CONTRACT

18. Trenchtech incorporates each preceding paragraph as if set forth at length herein.


19. EPI materially breached the terms of the Agreement as described above.

20. As a direct result of EPI's material breaches of the Agreement, Trenchtech has suffered significant financial harm in the nature of lost business and revenue. Specifically, Trenchtech has lost approximately \$5 million in revenue as a result of EPI supplying its products to ShorQuip who poached several customers from Trenchtech as a result of ShorQuip's ability to offer EPI's equipment to these customers.

21. EPI's conduct in continuing to sell its product to ShorQuip constitutes an ongoing material breach of the Agreement which continues to result in Trenchtech suffering significant damages.

22. WHEREFORE, Trenchtech, Inc. demands that this Court enter judgment in its favor and against Efficiency Production, Inc. in an amount in excess of \$150,000, plus costs and such other relief as this Court deems just and proper.

SEMANOFF ORMSBY
GREENBERG & TORCHIA, LLC

BY: 
MICHAEL B. DUBIN, ESQUIRE
2617 Huntingdon Pike
Huntingdon Valley, PA 19006
Attorneys for Plaintiff